IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16 .12.2006

Coram

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.15840 of 1996

M/s.K.Abdul Azeez Son & Co.,
No.4, Horse Bidis,
No.4,Big Alipuran Street,
Vellor - 632 004.
N.A.A.District,
by its Partner,
K.Iqbal Ahamed ...Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
North Arcot Ambedkar District,
Fort,
Vellore - 632 004.

2.A.Gunasekaran
Independent Contractor.
No.25/2,Chunnambukara Street,
Vellore - 632 004.
N.A.A.District.

3.M.Tamilmani
4.P.Selvakumar
5.V.Selvam
6.C.Sundramoorthy
7.K.Rajan
8.S.B.Ramalingam
9.R.Munian
10.V.Mani
11.C.Munuswamy
12.T.K.Lala
13.Abdul Alim
14.Abdulla Khan
15.M.Appunu
16.G.Chinnakannu
17.Dhandayutham (Deceased)
18.Doraiswamy
19.R.Gopal
20.M.Jagedesan
21.E.Kesavan
22.K.Kannan
23.G.Krishnan
24.Mrs.D.Lalitha ...Respondents

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(R24 substituted as LR of the deceased 17th respondent as per order dated 03.09.2003 in W.P.M.P.No.26897/03)

WRIT PETITION filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent, the Labour Court, ending with its order C.P.Nos.2315/93 to 2335/93 dated 10.09.1996 and quash the same.

For Petitioner :Mr.Habibullah Basha Sc for M/s. E.S.Govindan & S.SureshKumar

For R3 to R16,R18to R23 :Mr.Yashod Vardan for Mr.M.MuthuPandian

Other Respondents :No Appearance

O R D E R

The petitioner is questioning the legality and correctness of the Order passed by the Presiding Officer of the Labour Court, Vellore in Computation Petition Nos.2315/93 to 2335/93.

2. In a nut shell, the facts of the case are:

The claim petitions are filed on behalf of 21 persons claiming themselves as workmen of the second respondent and for grant of closure compensation, notice pay and backwages. The parties are referred as they are shown in the Original Computation Petitions, before the Labour Court.

3. The facts of the case are those 21 persons were employed by the Contractor, who is the second respondent and he is the licenced contractor and he closed his branch on 01.04.1993 and the procedure for closing down was not observed. Therefore it amounts to retrenchment and those 21 persons were claiming as workmen of the second respondent and claiming closure compensation and notice pay. The Labour Court after examining one witness on behalf of the workmen and two witnesses on behalf of the respondent and after marking five documents for workmen and eight documents for respondent allowed the plea of the workmen and directed the first respondent to pay the amount to the petitioners and the claim against the second respondent is dismissed.

4. Aggrieved by the same, the first respondent filed this writ petition. In the common order of the Labour Court, it is mentioned that the petitioners were employed by the second respondent and the second respondent is the licensed contractor of

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the first respondent. The second respondent closed his branch on 01.04.1993, denying employment to the petitioners and procedure for closing has not been observed, as laid down under the Industrial Disputes Act. Therefore, it amounts to retrenchment and petitioners are entitled for Closure compensation and notice pay under Section 25FFF of Industrial Disputes Act. In the common order, it is also mentioned that the first respondent/writ petitioner filed detailed counter that he never employed the workmen and never paid wages to them and there was no privity of contract of employment between the first respondent/writ petitioner and the workmen and there is no relationship of master and servant and the first respondent/writ petitioner has no control over the second respondent.

5. In this case, the most interesting person is none other than the second respondent, the independent contractor, who is hand in glove with the workmen. He filed a counter admitting the case of the workmen. According to him, his father was the contractor of the first respondent/writ petitioner and after his death in 1978, the licence was transferred in his name and all the workmen were employed on behalf of the first respondent/writ petitioner, as per their directions and the wages, provident fund, bonus are all paid by the first respondent/writ petitioner and all the registers are also maintained by them. It is stated that the job of the contractor is to issue Beedi leaves and Tobacco received from the first respondent/writ petitioner to the workmen and get them rolled and handed over to the first respondent/writ petitioner and he gets only commission. Therefore, he intends to wash off his hands by pointing fingers at the first respondent/writ petitioner for payment of compensation. After the evidence were examined, the Labour Court has framed two points and gave finding in favour of the workmen.

6. Mr.Habibullah Basha, learned Senior Advocate contended on behalf of the first respondent/writ petitioner that there is no evidence on record that all the 21 workmen are employed by the second respondent and paid any salary, provident fund, etc. It is vehemently contended that no document was produced to prove the same. It is contended that the names of eight workmen are not found in the records maintained by the second respondent and these facts are proved from the reply received from Regional Provident Fund Commissioner, to whom the returns are submitted by the Contractor. It is thus contended that these eight persons are not at all the workmen of the Contractor and they are not entitled for any compensation. It is also contended that the communication received from the Regional Provident Fund Commissioner, discloses that seven more workmen, did not work for that period and the same was also established through the returns submitted by the Contractor in Form 6-A, for the years 1987-1992. Therefore those seven workmen are also not entitled for any compensation. It is stated that the names of only five workmen finds place in Form 6-A of the Employees Provident Fund Scheme, 1952, in the annual statement of contribution and they alone can be treated as the workmen of the second respondent, who is an independent contractor

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and these facts are not all considered by the Labour Court. Though all these points are raised before them, but the Order of the Labour Court is one way and their written arguments are not considered and without any discussion on the written arguments and without appraising their evidences on record and without appreciating the communication from the Regional Provident Fund Commissioner, the impugned order was passed on sympathetic grounds and the same is liable to be set aside.

7. Heard arguments on both sides in detail. Minutely perused the impugned Order. The point for determination is whether the Order of the Labour Court is liable to be quashed.

8. Normally, the Writ Court do not interfere with the Orders of the Labour Court, but when it is pointed out that there is no evidence or there is a mis-leading of evidence or there is a perverse finding or there is an erroneous approach, then this Court will have to interfere, with the orders of the Labour Court.

9. The law in relation to the limitations of the jurisdiction of the High Court in entertaining a plea for Writ under Article 226 of the Constitution is well settled. A Writ of Certiorari can be entertained by the High Court, if it is shown that the impugned Order suffers from an error apparent on the face of the record. In order to justify the Writ of Certiorari, there must be a clear error, that is error of law and not an error of fact, because error of fact, though serious, though it may be apparent on the face of the record, cannot sustain a claim for the writ of certiorari. It is only error of law that justify the issue of the said writ, provided as it would reasonably be treated as erroneous and apparent on the face of record. If a finding of fact is made by the impugned Order and it is shown that it is based on no evidence, that would no doubt be a point of law under Article 226 of the Constitution. If this distinction is not borne in mind, it is unlawful to entertain an application for writ under Article 226. The High Court may unwittingly assume the jurisdiction of the appellate court, which is clearly distinct from the jurisdiction of the writ court. If it can be said that the view taken by the Tribunal, is not reasonable, it can be said that error is apparent on the face of record. The High Court cannot exercise its limit, in its writ jurisdiction, in interfering with the findings of the Labour Court or Tribunal based on the construction put up by it on a document, unless it is reasonably not possible.

10. Thus the noteworthy thing is whenever there is an adjudication by the Labour Court or the Tribunal upon a question of fact, the High Court is not entitled to interfere on jurisdictional facts, which the Tribunal was well considered. But If the Tribunal omits to consider any crucial fact or if the Labour Court gives erroneous finding on the fact, leading to an error of law or if the Labour Court omits to consider any fact, it would no doubt, be a point of law, which has to be set aside by the High Court under Article 226 of the constitution.

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11. In the instant case, the first respondent/writ petitioner has raised important and vital points before the Labour Court and he has also placed the same, before this Court. All those points were found in the written arguments, filed on behalf of the first respondent/writ petitioner before the Labour Court. It is very unfortunate to note that the Court below did not consider many of those important points. Ex.R-2 is the letter of Regional Provident Fund Commissioner, Madras allotting Provident Fund Code Number TN/18329, to the Establishment of Gunasekaran, that is the Contractor as per Ex.R5-R8 the documents submitted by the independent contractor to the Regional Provident Fund Commissioner, Madras which were requested and obtained from the above officer by the Labour Court and discloses the names of total employees, who worked with the independent contractor for that period. It appears that only 8 employees worked with the second respondent, whereas the Labour Court has awarded compensation to 21 employees, in fact there was no discussion by the Labour Court on any of these vital documents. The primary duty cast on the workmen to prove that they are the workers of the independent contractor, then the question about who is the principle employer can be considered. If the workmen fails to establish that they are the workmen of any particular person, it is unnecessary for the Court to verify, who is the employer because privity of contract of employment is not in extent and there is no relation of master and servant between those persons.

12. In the instant case, admittedly the workmen did not produce any document to prove that they are the workmen of the contractor. The contractor though admits in his counter and in his evidence, did not produce any record to prove that those 21 persons or at least eight of them worked with him at any point of time or other. The records received from the Regional Provident Fund Commissioner's office discloses that majority of those 21 persons are not workmen of the contractor, who is the second respondent. The authenticity of those documents received from Regional Provident Commissioner cannot be doubted. The Labour Court has omitted to note this important and relevant fact. Therefore, this Court has not hesitation to hold that the findings of the Labour Court is perverse and it is against the principles of Industrial Law. However sympathetic, the Court is supposed to restrain itself on the legalities. Until and unless it is established that those 21 persons are the workmen of the Contractor the second respondent, they have no case and this fact has not been established either by those 21 persons or by the second respondent who is sailing with them.

13. In the written arguments, the first respondent/writ petitioner clearly stated that it is the second respondent the independent contractor, who is instrumental for the entire litigation. It is clearly stated in para 3 of the written arguments that the independent contractor has colluded with the workmen and hushed up and suppressed all the records and raised the frivolous dispute.

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14. The Labour Court is also expected to verify this fact, when there are no records to prove that those 21 persons are workmen of the independent contractor. It is absurd to direct the first respondent to pay the compensation. Further according to the first respondent/writ petitioner, there was no rejection of beedies and the Labour Court has committed an error to hold that there was a rejection, basing on Ex.P-5. It is stated that Ex.P-5 is the challan prescribed by Central Government to accompany the beedies and this is a statutory document and Column No.3 of Ex.P-5 contains total quantity of Beedies and in Column No.2 of the counter of Ex.P-5, the quantity of beedies is accepted and if the quantity mentioned in Column Nos.3&2 respectively is one and the same, no beedies were rejected because entire quantity is accepted and there is a column in Ex.P-5 regarding beedies rejected because this is a common Challan for all excisable commodities. Ex.P-5 proves no rejection of beedies that has taken place at the establishment of first respondent and this is irrefutable conclusive proof because the entire quantity of beedies is accepted and acknowledged.

15. Whileso, the Court below mis-read and mis-led itself and came to erroneous conclusion. Likewise there are number of other infirmities in the Order of the Labour Court and it is unnecessary for this Court to go into all those details, because this Court has already noticed that the Labour Court has omitted to note the important facts and without any evidence and by showing sympathy, the impugned order was passed and it is an one side order. The case of the case of the first respondent/writ petitioner is not all discussed and the decisions cited by the first respondent/writ petitioner were also not considered.

16. Therefore, this Court is of the opinion that it is a fit case to quash the impugned Order. Accordingly the impugned order is quashed and the matter is remitted back to the Labour Court, with a direction to give opportunities to both sides, to prove their respective cases and after verifying each and every documents more particularly, the document received from the Regional Provident Fund Commissioner's Office and finalise the matter strictly in accordance with the rules of law.

17. In the result, the writ petition is allowed and the matter is remitted back to the Labour Court for fresh disposal. No Costs.

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To

The Presiding Officer,
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